

PART 1951 - SERVICING AND COLLECTIONS

Subpart R - Rural Development Loan Servicing

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PART 1951 - SERVICING AND COLLECTIONS

Subpart R - Rural Development Loan Servicing

§1951.851 Introduction.

(a) This Subpart contains regulations for servicing or liquidating loans made by Rural Development under the Intermediary Relending Program (IRP) to eligible IRP intermediaries and applies to ultimate recipients and other involved parties. The provisions of this Subpart supersede conflicting provisions of any other Subpart.

(b) This Subpart also contains regulations for servicing the existing Rural Development Loan Fund (RDLF) loans previously approved and administered by the U.S. Department of Health and Human Services (HHS) under 45 CFR Part 1076. This action is needed to implement the provisions of Section 1323 of the Food Security Act of 1985, P.L. 99-198, which provides for the transfer of the loan servicing authority for those loans from the HHS to the U.S. Department of Agriculture (USDA).

(c) The portion of this regulation pertaining to loanmaking applies to RDLF intermediaries cited in §1951.851(b) which have RDLF funds from HHS and have not fully utilized relending of those funds to ultimate recipients at the date of these regulations. The loanmaking of all other IRP loans serviced by this regulation is in accordance with Part 1948, Subpart C of this Chapter.

(d) These regulations do not negate contractual arrangements that were previously made by the HHS, Office of Community Services (OCS), or the intermediaries operating relending programs that have already been entered into with ultimate recipients under previous regulations.

(e) The loan program is administered by the Rural Development National Office. The Director, Business and Industry Division, is the point of contact for servicing activities unless otherwise delegated by the Administrator.

(f) Rural Development will input the necessary data via terminal screens into the Rural Community Facility Tracking System (RCFTS) on the RDLF loans. If Rural Development so desires. Form RD 2033-34, "Management System Card - Business and Industry," may be prepared in accordance with RD Instruction 2033-F. (Added 6-27-90, PN 138)

§1951.852 Definitions and abbreviations.

(a) General definitions. The following definitions are applicable to the terms used in this Subpart.

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- (1) Intermediary (Borrower). The entity receiving Rural Development loan funds for relending to ultimate recipients. Rural Development becomes an intermediary in the event it takes over loan servicing and/or liquidation.
- (2) Loan Agreement. The signed agreement between Rural Development and the intermediary setting forth the terms and conditions of the loan.
- (3) Low-income. The level of income of a person or family which is at or below the Poverty Guidelines as defined in Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).
- (4) Market value. The most probable price which property should bring, as of a specific date in a competitive and open market, assuming the buyer and seller are prudent and knowledgeable, and the price is not affected by undue stimulus such as forced sale or loan interest subsidy.
- (5) Principals of Intermediary. Includes members, officers, directors, and other entities directly involved in the operation and management of an intermediary organization.
- (6) Ultimate recipient. The entity receiving financial assistance from the intermediary. This may be interchangeable with the term "subrecipient" in some documents previously issued by HHS.
- (7) Rural area. Includes all territory of a State that is not within the outer boundary of any city having a population of twenty-five thousand or more.
- (8) State. Any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.
- (9) Technical assistance or service. Technical assistance or service is any function unreimbursed by Rural Development performed by the intermediary for the benefit of the ultimate recipient.

§ 1951.852(a) (Con.)

(10) Working capital. The excess of current assets over current liabilities. It identifies the liquid portion of total enterprise capital which constitutes a margin or buffer for meeting obligations within the ordinary operating cycle of the business.

(b) Abbreviations. The following abbreviations are applicable:
(Revised 02-06-98, SPECIAL PN.)

B&I - Business and Industry

CSA - Community Services Administration

EIS - Environmental Impact Statement

HHS - U.S. Department of Health and Human Services

IRP - Intermediary Relending Program

OCS - Office of Community Services

OIG - Office of Inspector General

OGC - Office of the General Counsel

RDLF - Rural Development Loan Fund

USDA - United States Department of Agriculture

§ 1951.853 Loan purposes for undisbursed RDLF loan funds from HHS.

(a) RDLF Intermediaries. Rural Development Loan funds will be used by the RDLF intermediary to provide loans to ultimate recipients in accordance with paragraph (b) of this section. Interest income, service fees, and other authorized financing charges received by RDLF intermediaries operating relending programs may be used to pay for: (1) The costs of administering the RDLF relending program, (2) the provision of technical assistance to borrowers, (3) the absorption of bad debts associated with RDLF loans, and (4) repayment of debt. All proceeds in excess of those needed to cover authorized expenses, as described above, must be returned to the Agency.

(b) Ultimate recipients.

(1) Financial assistance from the intermediary to the ultimate recipient must be for business facilities and community development projects in rural areas.

(2) Financial assistance involving Rural Development Loan funds from the intermediary to the ultimate recipient may include but not be limited to:

(i) Business acquisitions, construction, conversion, enlargement, repair, modernization, or development cost.

(ii) Purchasing and development of land, easements, rights-of-way, building, facilities, leases, or materials.

(iii) Purchasing of equipment, leasehold improvements, machinery or supplies.

(iv) Pollution control and abatement.

(v) Transportation services.

(vi) Startup operating costs and working capital.

(vii) Interest (including interest on interim financing) during the period before the facility becomes income producing, but not to exceed 3 years.

(viii) Feasibility studies.

(ix) Reasonable fees and charges only as specifically listed in this subparagraph. Authorized fees include loan packaging fees, environmental data collection fees, and other professional fees rendered by professionals generally licensed by individual State or accreditation associations, such as engineers, architects, lawyers, accountants, and appraisers. The amount of fee will be what is reasonable and customary in the community or region where the project is located. Any such fees are to be fully documented and justified.

(Revised 02-06-98, SPECIAL PN.)

(x) Aquaculture including conservation, development, and utilization of water for aquaculture. Aquaculture means the culture or husbandry of aquatic animals or plants by private industry for commercial purposes including the culture and growing of fish by private industry for the purpose of granting or augmenting publicly-owned or regulated stock of fish.

§1951.854 Ineligible assistance purposes.

(a) RDLF Intermediaries. RDLF loans may not be used by the intermediary:

- (1) For payment of the intermediary's own administrative costs or expenses.
- (2) To purchase goods or services or render assistance in excess of what is needed to accomplish the purpose of the ultimate recipient project.
- (3) For distribution or payment to the owner, partners, shareholders, or beneficiaries of the ultimate recipient or members of their families when such persons will retain any portion of their equity in the ultimate recipient.
- (4) For charitable and educational institutions, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.
- (5) For assistance to government employees, military personnel, or principals or employees of the intermediary who are directors, officers or have major ownership (20 percent or more) in the ultimate recipient.
- (6) For relending in a city with a population of twenty-five thousand or more as determined by the latest decennial census.
- (7) For a loan to an ultimate recipient which has applied or received a loan from another intermediary unless Rural Development provides prior written approval for such loan.
- (8) For any line of credit.

(9) To finance more than 75 percent of the total cost of a project by the ultimate recipient. The total amount of RDLF loan funds requested by the ultimate recipient plus the outstanding balance of any existing RDLF loan(s) will not exceed \$150,000. Other loans, grants, and/or intermediary or ultimate recipient contributions or funds from other sources must be used to make up the difference between the total cost and the assistance provided with RDLF funds.

(10) For any investments in securities or certificates of deposit of over 30-day duration without the concurrence of Rural Development. If the RDLF funds have been unused to make loans to ultimate recipients for 6 months or more, those funds will be returned to Rural Development unless Rural Development provides an exception to the RDLF intermediary. Any exception would be based on evidence satisfactory to Rural Development that every effort is being made by the intermediary to utilize the RDLF funding in conformance with program objectives.

(b) Ultimate recipients. Ultimate recipients may not use assistance received from RDLF intermediaries involving RDLF funds:

(1) For agricultural production, which means the cultivation, production (growing), harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds and marine life, either for fiber or food for human consumption, and disposal or marketing thereof, the raising, housing, feeding, breeding, hatching, control and/or management of farm and domestic animals). Exceptions to this definition are:

(i) Aquaculture as identified under eligible purposes.

(ii) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, the growing of vegetables from seed to the transplant stage.

(iii) Forestry, which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(iv) Financial assistance for livestock and poultry processing as identified under eligible purposes.

(v) The growing of mushrooms or hydroponics.

(2) For the transfer of ownership unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide expanded job opportunities.

(3) For community antenna television services or facilities.

(4) For any legitimate business activity when more than 10 percent of the annual gross revenue is derived from legalized gambling activity.

(5) For any illegal activity.

(6) For any otherwise eligible project that is in violation of either a Federal, State or local environmental protection law or regulation or an enforceable land use restriction unless the financial assistance required will result in curing or removing the violation.

(7) For any hotels, motels, tourist homes, or convention centers.

(8) For any tourist, recreation, or amusement centers.

§§1951.855 - 1951.858 [Reserved]

§1951.859 Terms of loans.

(a) No loans shall be extended for a period exceeding 30 years. Principal payments on loans will be made at least annually. The initial principal payment may be deferred not more than 3 years.

(b) The terms of loan repayment will be those stipulated in the loan agreement and/or promissory note.

§1951.860 Interest on loans.

(a) RDLF intermediaries: When the RDLF loan portfolio was transferred from HHS to USDA as required under P.L. 99-198, Section 1323 of the Food Security Act of 1985, there were provisions that affected the interest rates on those loans.

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§1951.860 (a)(Con.)

(1) Those loans made in 1980 and 1981 carried an original note rate of 1 percent interest when they were first issued. The legislation provides for those loans made in 1980 and 1981 to have a permanent interest rate reduction to 1 percent effective December 23, 1985, to maturity. However, the interest rates on the loans made in 1983 and 1984 may remain the same as the original note rate.

(2) Loans made in 1983 and 1984 do not automatically qualify for a lower rate than the level of interest rates when the notes were first issued. Section 407 of P.L. 99-425 provides for a weighted average requirement that would affect those loans made in 1983 and 1984 to intermediary borrowers.

(3) In those cases where loans were made to RDLF intermediaries and the weighted average of all loans made by the RDLF intermediary after December 31, 1982, does not exceed the sum of 6 percent plus the interest rate to the intermediary (7 Percent), the interest rate to be charged the RDLF intermediary will be the rate charged on such loans made in 1980, or 1 percent. Should the weighted average exceed 7 percent, the note rate will control.

(i) In order for Rural Development to determine the weighted average of the loan portfolio, the RDLF intermediary will be required to complete a weighted loan average rate on its outstanding portfolio. The schedule prepared for Rural Development's review should include:

(A) Calculations of the interest amount scheduled to accrue on each loan outstanding over a 1-year period based on the current interest rate of each ultimate recipient's loan.

(B) The sum total of interest on each individual loan will be added together to determine the total interest amount scheduled to accrue over a 1-year period.

(C) Divide the total of paragraph (a)(2) of this section by the total principal outstanding to determine the average interest percent yield in the intermediary's loan portfolio.

(D) The loans to be included in determining the weighted interest average will be those made from January 1, 1983, forward.

(E) Rural Development will use the anniversary date of October 1 of each year to request the intermediary to complete a weighted interest average to determine the interest rate on its RDLF loan for the coming calendar year, January 1 through December 31. All loans made in 1980 and 1981 have had the interest rate permanently reduced by legislation to 1 percent, effective December 25, 1985.

(F) The weighted loan average interest rate on the outstanding loan portfolio as referenced in this section will be forwarded to Rural Development along with sufficient documentation which should include calculations, list of outstanding loans, current interest rate being charged on the loan, etc.

(b) Interest rates charged by intermediaries to the ultimate recipients shall be at rates negotiated by those parties. Intermediaries are encouraged to make loans to ultimate recipients at the lowest possible rate, taking into account the cost of the loan funds to the intermediary and the cost of administering the loan portfolio.

§§1951.861 - 1951.865 [Reserved]

§1951.866 Security.

(a) Loans from RDLF intermediaries to ultimate recipients. Security requirements for loans from intermediaries to ultimate recipients will be negotiated between the intermediaries and ultimate recipients. Rural Development concurrence in the intermediary's security proposal is required only when security for the loan from the intermediary to the ultimate recipient will also serve as security for the Rural Development loan.

(b) Additional security. The Rural Development may require additional security at any time during the term of a loan to an intermediary if, after review and monitoring, an assessment indicates the need for such security.

(c) Appraisals. Real property serving as security for all loans to intermediaries and for loans to ultimate recipients serving as security for loans to intermediaries will be appraised by a qualified appraiser. For all other types of property, a valuation shall be made using any recognized, standard technique for the type of property involved (including standard reference manuals), and this valuation shall be described in the loan file.

§1951.867 Conflict of interest.

The intermediary will, for each proposed loan to an ultimate recipient, inform Rural Development in writing and furnish such additional evidence as Rural Development requests as to whether and the extent to which the intermediary or its principal officers (including immediate family) hold any legal or financial interest or influence in the ultimate recipient or the ultimate recipient or any of its principal officers (including immediate family) holds any legal or financial interest or influence in the intermediary. Rural Development shall determine whether such ownership, influence or financial interest is sufficient to create a potential conflict of interest. In the event Rural Development determines there is a conflict of interest, the intermediary's assistance to the ultimate recipient will not be approved until such conflict is eliminated.

§§1951.868 - 1951.870 [Reserved]

§1951.871 Post award requirements.

(a) RDLF intermediaries with undisbursed RDLF loan funds shall be governed by these regulations, the loan agreement, the approved work program, security interests, and other conditions which Rural Development may require in awarding a loan.

(b) Unless otherwise specifically agreed to in writing by the Rural Development, any loan funds held by an intermediary and any funds obtained from loaning Rural Development-derived funds and recollecting them that are not immediately needed by the intermediary for an ultimate recipient should be deposited in an interest-bearing account in a bank or other financial institution which will be covered by a form of Federal deposit insurance. Any interest or income earned as a result of such deposits shall be used by the intermediary only for purposes authorized by Rural Development.

(c) Intermediaries operating relending programs must maintain separate ledgers and segregated accounts for RDLF funds at all times.

(d) Reporting requirements shall be those delineated in the loan agreement between the United States and the intermediary and such subsequent requirements as Rural Development deems appropriate. The intermediaries must document periodically the extent to which increased employment, income and ownership opportunities are provided to rural residents for each loan made by such intermediary.

(e) No intermediary may make a loan to an ultimate recipient who has applied for or received a loan from another intermediary unless Rural Development provides prior written approval for such loan.

(f) All loan payments that are due on RDLF loans will be made payable to the Farmers Home Administration, using the number assigned, and mailed directly to: Rural Development, Finance Office, FC 35, 1520 Market Street, St. Louis, Missouri 63103.

§1951.872 Other regulatory requirements.

(a) Intergovernmental consultation. The RDLF program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. For each ultimate recipient to be assisted with a loan under this Subpart and for which the State in which the ultimate recipient is to be located has elected to review the program under their intergovernmental review process, the State Point of Contact must be notified. Notification, in the form of a project description, can be initiated by the intermediary or the ultimate recipient. Any comments from the State must be included with the intermediary's request to use the loan funds for the ultimate recipient. Prior to Rural Development's decision on the request, compliance with the requirements of intergovernmental consultation must be demonstrated for each ultimate recipient. These requirements should be carried out in accordance with RD Instruction 1940-J, "Intergovernmental Review of Rural Development Programs and Activities," available in any Rural Development office.

(b) Environmental requirements.

(1) Unless specifically modified by this section, the requirements of Subpart G of Part 1940 of this Chapter apply to this Subpart. Rural Development will give particular emphasis to ensuring compliance with the environmental policies contained in §1940.303 and 1940.304 in Subpart G of Part 1940 of this Chapter. Intermediaries and ultimate recipients of loans must consider the potential environmental impacts of their projects at the earliest planning stages and develop plans to minimize the potential to adversely impact the environment.

(2) As part of the intermediary's request to Rural Development for concurrence to make a loan to an ultimate recipient, the intermediary will include for the ultimate recipient a properly completed Form RD 1940-20, "Request for Environmental Information," if it is classified as a Class I or Class II action. Rural Development will complete the environmental review required by Subpart G of Part 1940 of this Chapter. The results of this review will be used by Rural Development in making its decision on the request.

(c) Equal opportunity and nondiscrimination requirements.

(1) In accordance with Title V of P.L. 93-495, the Equal Credit Opportunity Act, neither the intermediary nor Rural Development will discriminate against any applicant on the basis of race, color, religion, national origin, age, physical or mental handicap (provided that the applicant has the capacity to enter into a binding contract), sex or marital status with respect to any aspect of a credit transaction anytime Federal funds are involved.

(2) The regulations contained in Part 1901, Subpart E of this Chapter apply to loans made under this program.

(3) The Administrator will assure that equal opportunity and nondiscrimination requirements are met in accordance with Title VI of the Civil Rights Act of 1964, "Nondiscrimination in Federally Assisted Programs," 42 U.S.C. 2000d - 2000d-4. If there is indication of noncompliance with these requirements, such facts will be reported in writing to the Administrator, ATTN: Equal Opportunity Officer.

§§1951.873 - 1951.876 [Reserved]

§1951.877 Loan agreements.

(a) A loan agreement will have been executed by the RDLF intermediary and OCS or HHS for each loan. The loan agreement ordinarily would contain the following provisions:

- (1) The amount of the loan.
- (2) The interest rate.
- (3) The term and repayment schedule.
- (4) The provisions for late charges.
- (5) Provisions regarding default.
- (6) Disbursement procedure.
- (7) Insurance requirements.

(i) Hazard insurance with a standard mortgage clause naming the intermediary as beneficiary will be required on every ultimate recipient in an amount that is at least the lesser of the depreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk, public liability, property damage, flood or mudslide, or any other hazard insurance that may be required to protect the security. The RDLF intermediary's interest in the insurance ordinarily will be assigned to the Rural Development.

(ii) Ordinarily, life insurance, which may be decreasing term insurance, is required for the principals and key employees of the ultimate recipient and will be assigned or pledged to the RDLF intermediary and subsequently to Rural Development. A schedule of life insurance available for the benefit of the loan will be included as part of the application.

RD Instruction 1951-R
§1951.877 (a)(7) (Con.)

(iii) Workmen's compensation insurance on ultimate recipients is required in accordance with State law.

(iv) The RDLF intermediary is responsible for determining if an ultimate recipient is located in a special flood or mudslide hazard area anytime Federal funds are involved. If the ultimate recipient is in a flood or mudslide area, then flood or mudslide insurance must be provided.

(b) The RDLF intermediary will agree:

(i) Not to make any changes in the RDLF intermediary's articles of incorporation, charter or bylaws without the concurrence of Rural Development.

(ii) Not to make a loan commitment to an ultimate recipient without first receiving Rural Development's written concurrence in the proposed use of loan funds.

§§1951.878 - 1951.880 [Reserved]

§1951.881 Loan servicing.

(a) These regulations do not negate contractual arrangements that were previously made by the HHS, Office of Community Services (OCS), or the intermediaries operating relending programs that have already been entered into with ultimate recipients under previous regulations. Preexisting documents control when in conflict with these regulations. The loan is governed by terms of existing legal documents of each intermediary. The RDLF/IRP intermediary is responsible for compliance with the terms and conditions of the loan agreement.

(b) Each intermediary will be monitored by Rural Development based on progress reports submitted by the intermediary, audit findings, disbursement transactions, visitations, and other contact with the intermediary as necessary.

(c) Loan servicing is intended to be preventive rather than a curative action. Prompt follow-up on delinquent accounts and early recognition of potential problems and pursuing a solution to them are keys to resolving many problem loan cases.

(d) Written notices on payments coming due will be prepared and sent to the intermediary by the Rural Development Finance Office approximately 15 days in advance of the due date of the payments. A copy of the notice will be sent to the Rural Development Administrator or designee.

(e) If the scheduled payment is not made by the intermediary within 30 days after due date of the payment, the Finance Office will send a past due notice to the intermediary. The notice will show the late charge amount, if applicable, and the interest amount past due. The late charge amount, if applicable, and the interest past due amount will be capitalized as principal due 30 days after the due date of the monthly payment unless existing loan documents prior to this regulation state otherwise. If the loan documents state when late charge amounts or interest accruals are to be capitalized, the loan documents will prevail.

(1) A per diem amount will be shown on the late notice sent to the intermediary. The Finance Office will send this notice to the Administrator or designee 30 days after the past due notice has been sent to the intermediary and the account remains delinquent. Thereafter, further notices by Rural Development designee will be sent to the intermediary on the late payments or any further payments until the account is in a current status.

(2) The Finance Office will notify the Administrator or designee on any payments due from the delinquent intermediary. It will be the responsibility of the Administrator or designee to follow up on delinquent payments to bring the account to a current status.

(3) A copy of any correspondence or notice generated by the Administrator or designee on any delinquent loan will be sent to the Finance Office.

- (4) Interest will be computed on a 365-day basis unless legal documents state otherwise.
- (f) It is the responsibility of the Finance Office to maintain complete accounting records for each intermediary. The Finance Office will:
- (1) Coordinate with the Administrator or designee to assure that interest and principal payments received are in accordance with the promissory notes and its companion documents, and the effective amortization schedule. If the payments received appear to be incorrect, the Finance Office will advise the Administrator or designee. The Administrator or designee will take the necessary action to clear the issue and promptly advise the Finance Office of the proper accounting procedure.
 - (2) Send monthly statements to the National Office reflecting all payments received to date on each borrower.
 - (3) Send to the Administrator or designee a monthly summary of all intermediary loans as follows:
 - (i) Number and amount of all loans.
 - (ii) Total advanced on all loans.
 - (iii) Total interest and principal received on the loans.
 - (iv) Total outstanding balance on all loans.
 - (4) Prepare reamortization schedules needed as a result of restructuring any loans and send to the Administrator or designee.
 - (5) Furnish in writing to the Administrator or designee a per diem amount on the actual interest amount due when requested by the Administrator.
- (g) It is the responsibility of the Administrator or designee to:
- (1) Review and analyze the semiannual report of the intermediaries and reconcile same to the annual audits.

§ 1951.881(g) (Con.)

- (2) Review the annual audits of the intermediaries.
- (3) Review the semiannual reports of the intermediaries and take appropriate action when necessary.
- (4) Follow up on delinquent intermediaries to bring the account current.
- (5) Notify the Finance Office in writing when a loan is determined to be uncollectible in order for the Finance Office to make provisions for an appropriate timely entry to the loss account.
- (6) Furnish to the Finance Office the necessary information to produce reamortization schedules.
- (7) Provide the Finance Office a copy of any correspondence in regard to the restructuring of the loans.
- (8) Review reamortization schedules, the schedule will then be forwarded to the intermediary.
- (9) Confirm account balances. Payment history of loans and any other related matter will be furnished to the requesting party, (i.e. third party auditing firms) if warranted and proper. If there are discrepancies in any loan balances being confirmed, the Finance Office should be consulted before the Administrator or designee writes the requested parties.
- (10) Furnish upon request by the Finance Office, the information necessary to help reconcile account balances, obtain evidence of payments made by the borrower, and any other related data necessary to keep the financial records correct and in balance.
- (11) Answer Congressional and other correspondence.
- (12) Review intermediary's plans, cash flow projections, balance sheets, and operating statements.

§ 1951.882 Field visits.

The Agency will conduct an annual field visit to the IRP/RDLF intermediary and the report should be done on Form RD 1951-5, "Intermediary Relending Program/Rural Development Loan Fund Field Visit Review." (Revised 05-08-02, SPECIAL PN.)

(a) During or in preparation for field visits to RDLF/IRP intermediaries by Rural Development personnel, the following loan servicing activities are to be performed:

- (1) Review what is being done to inform eligible applicants of the program's existence.
- (2) Obtain current and proper financial information and analyze for trends on all RDLF/IRP intermediaries. Also determine if there is a sufficient interest rate spread between the interest rate charged the intermediary and the interest rate charged the ultimate recipients to cover the administrative costs, including bad debts of operating the program.
- (3) Include in the write-ups of the field visit any issues or problems not resolved from the last visitation in the agenda.
- (4) Review credit elsewhere information (has the ultimate recipient been refused funds by other sources?) to determine if this information is in the files.
- (5) Observe collateral and its condition, maintenance, protection and utilization by the intermediary or ultimate recipient.
- (6) Review the process for handling loan proceeds to assure they are deposited in an interest-bearing account or time deposit in a bank or other financial institution fully protected by Federal or State insurance.
- (7) Review materials to determine if the purpose of the program is being fulfilled; i.e., loan funds are being used in accordance with Rural Development policies, procedures, the approved work plan and the Loan Agreement.
- (8) A report of the visit will be made on "RDLF/IRP Review Summary Sheet," or otherwise documented and included in the loan file in the format of the "RDLF/IRP Review Summary Sheet." The report should include an opinion on the financial condition of the intermediary based upon the review of the annual audited financial statement, periodic financial statements, and observations made during the visit and other sources.
- (9) Determine if the ultimate recipients' files are complete, organized, and current.
- (10) Any instructions, directions, or corrective action should be confirmed by letter to the intermediaries.

§ 1951.882 (Con.)

(b) All intermediaries are required to provide an annual audited financial statement as well as a summary sheet of their lending program on each ultimate recipient receiving Federal funds. The summary sheet of their lending program on each ultimate recipient should include but not be limited to: the borrower's name and address, type of business, use of loan funds, loan amount, date of note, outstanding balance, date of final payment, interest rate, amount and type of collateral, insurance information, loan status, and the date of Agency approval, if applicable.

(c) The intermediary should perform an analysis on its ultimate recipients and follow up in writing on any servicing action required. A copy of the analysis will be provided to the Agency for those ultimate recipients having Federal funds.

§ 1951.883 Reporting Requirements:

(a) Intermediaries are to provide the Agency with reports as required in their respective loan agreements, applicable statutes and as required by the Agency. The report shall include the following:

(1) An annual audit; dates of audit report period need not necessarily coincide with other reports on the RDLF/IRP. Audits shall be due 90 days following the audit period. Audits must cover all of the intermediary's activities. Audits will be performed by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970, by a regulatory authority of a State or other political subdivision of the United States. An acceptable audit will be performed in accordance with generally accepted auditing standards and include such tests of the accounting records as the auditor considers necessary in order to express an opinion on the financial condition of the intermediary. The Agency does not require an unqualified audit opinion as a result of the audit. Compilations or reviews do not satisfy the audit requirement.

(2) Quarterly or semiannual reports (due 30 days after the end of the period). (Revised 02-06-98, SPECIAL PN.)

(i) Reports will be required quarterly during the first year after loan closing and, if all loan funds are not utilized during the first year, quarterly reports will be continued until at least 90 percent of the Agency IRP loan funds have been advanced to ultimate recipients. Thereafter, reports will

be required semiannually. Also, the Agency may require quarterly reports if the intermediary becomes delinquent in repayment of its loan or otherwise fails to fully comply with the provisions of its work plan or Loan Agreement, or the Agency determines that the intermediary's IRP revolving fund is not adequately protected by the current sound worth and paying capacity of the ultimate recipients.

(ii) These reports shall contain information only on the IRP revolving loan fund, or if other funds are included, the IRP loan program portion shall be segregated from the others; and in the case where the intermediary has more than one IRP revolving fund from the Agency a separate report shall be made for each of the IRP revolving funds.

(iii) The reports will include, on a form provided by the Agency, (Form RD 1951-4, "Report of IRP/RDLF Lending Activity"), information on the intermediary's lending activity, income and expenses, financial condition, and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

(3) An annual report on the extent to which increased employment, income and ownership opportunities are provided to low-income persons, farm families, and displaced farm families for each loan made by such intermediary.

(4) Proposed budget for the following year.

(5) Other reports as the Agency may require from time to time.

(b) Intermediaries shall report to the Agency whenever an ultimate recipient is more than 90 days in arrears in the repayment of principal or interest.

§ 1951.884 Non-Federal funds.

Once all the Agency-derived loan funds have been utilized by the intermediary for assistance to ultimate recipients according to the provisions of these regulations and the loan agreement, assistance to new ultimate recipients financed thereafter from the intermediary's revolving loan fund shall not be considered as being derived from Federal funds and the requirements of these regulations will not be imposed on those new ultimate recipients. Ultimate recipients assisted by the intermediary with Agency-derived loan funds shall be required to comply with the provisions of these regulations and/or loan agreement.

§ 1951.885 Loan classifications.

All loans to intermediaries in the Agency portfolio will be classified by the Agency at loan closing and again whenever there is a change in the loan which would impact on the original classification. No one classification should be viewed as more important than others. The uncollectibility aspect of Doubtful and Loss classifications is of obvious importance. However, the function of the Substandard classification is to indicate those loans that are unduly risky which may result in future losses. Substandard, Doubtful

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(Added 02-06-98, SPECIAL PN)

(08-25-88) SPECIAL PN

and Loss are adverse classifications. The special mention classification is for loans which are not adversely classified but which require the attention and follow-up of Rural Development. The loans will be classified as follows:

(a) Seasoned loan classification. To be classified as a seasoned loan, a loan must:

(1) Have a remaining principal loan balance of two thirds or less of (1) the original aggregate of all existing loans made to that intermediary.

(2) Be in compliance with all loan conditions and Rural Development regulations.

(3) Have been current on the loan(s) payments for 24 consecutive months.

(4) Be secured by collateral which is determined to be adequate to ensure there will be no loss on the loan.

(b) Current non-problem classification. This classification includes those loans which have been current for less than 24 consecutive months and are in compliance with the loan conditions and Rural Development regulations, and are not considered to pose a credit risk to Rural Development. These loans would be classified as seasoned but for the "24 months" and "two-thirds" requirements for seasoned loans.

(c) Special mention classification. This classification includes loans which do not presently expose Rural Development to a sufficient degree of risk to warrant a Substandard classification but do possess credit deficiencies deserving Rural Development's close attention because the failure to correct these deficiencies could result in greater credit risk in the future. This classification would include loans that may be high quality, but which Rural Development is unable to supervise properly because of an inadequate loan agreement, the condition or lack of control over the collateral, failure to obtain proper documentation or any other deviations from prudent lending practices. Adverse trends in the intermediary's operation or an imbalanced position in the balance sheet which has not reached a point that jeopardizes the repayment of the loan should be assigned to this classification. Loans in which actual, not potential, weaknesses are evident and significant should be considered for a Substandard classification.

(d) Substandard classification. This classification includes loans which are inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. Loans in this classification must have a well defined weakness or weaknesses that jeopardize the payment in full of the debt. If the deficiencies are not corrected, there is a distinct possibility that Rural Development will sustain some loss.

(e) Doubtful classification. This classification includes those loans which have all the weaknesses inherent in those classified Substandard with the added characteristic that the weaknesses make collection or liquidation in full, based on currently known facts, conditions and values, highly questionable and improbable.

(f) Loss classification. This classification includes those loans which are considered uncollectible and of such little value that their continuance as loans is not warranted. Even though partial recovery may be effected in the future, it is not practical or desirable to defer writing off these basically worthless loans.

§§1951.886 - 1951.888 [Reserved]

§1951.889 Transfer and assumption.

(a) All transfers and assumptions must be approved in advance in writing by Rural Development. Such transfers and assumptions must be to an eligible intermediary.

(b) Available transfer and assumption options to eligible intermediaries include the following:

(1) The total indebtedness may be transferred to another eligible intermediary on the same terms.

(2) The total indebtedness may be transferred to another eligible intermediary on different terms not to exceed those terms for which an initial loan can be made to an organization that would have been eligible originally.

(3) Less than total indebtedness may be transferred to another eligible intermediary on the same terms.

(4) Less than total indebtedness may be transferred to another eligible intermediary on different terms.

(c) The transferor will prepare the transfer document for Rural Development's review prior to the transfer and assumption.

(d) The transferee will provide Rural Development with a copy of its latest financial statement and a copy of its annual financial statement for the past 3 years if available; its Federal Tax Identification number; organizational charter; minutes from the Board of Directors authorizing the transaction; certification of good standing from the Secretary of State or whatever regulatory agency oversees nonprofit corporations for that State or Commonwealth where the entity is headquartered; and any other information that Rural Development deems necessary for its review.

(e) The assumption agreement will contain the Rural Development case number of the transferor and transferee.

(f) When the transferee makes a cash downpayment in connection with the transfer and assumption, any proceeds received by the transferor will be credited on the transferor's loan debt in inverse order of maturity.

(g) The Administrator or designee will approve or decline all transfers and assumptions.

§1951.890 Office of Inspector General and Office of General Counsel referrals.

When facts or circumstances indicate that criminal violations, civil fraud, misrepresentations, or regulatory violations may have been committed by an applicant or an intermediary, Rural Development will refer the case to the appropriate Regional Inspector General for Investigations, OIG, USDA, in accordance with RD Instruction 2012-B (available in any Rural Development office) for criminal investigation. Any questions as to whether a matter should be referred will be resolved through consultation with OIG and Rural Development and confirmed in writing. In order to assure protection of the financial and other interests of the Government, a duplicate of the notification will be sent to the OGC. OGC will be consulted on legal questions. After OIG has accepted any matter for investigation, Rural Development staff must coordinate with OIG in advance regarding routine servicing actions on existing loans.

§1951.891 Liquidation; default.

(a) In the event that Rural Development takes over the servicing of the ultimate recipient of an intermediary, those loans will be serviced by this regulation and in accordance with the contractual arrangement between the intermediary and the ultimate recipient. Should the Rural Development determine that it is necessary or desirable to take action to protect or further the interests of Rural Development in connection with any default or breach of conditions under any loan made hereunder, the Rural Development may:

- (1) Declare that the loan is immediately due and payable.
 - (2) Assign or sell at public or private sale, or otherwise dispose of for cash or credit at its discretion and upon such terms and conditions as Rural Development shall determine to be reasonable, any evidence of debt, contract, claim, personal or real property or security assigned to or held by the Rural Development in connection with financial assistance extended hereunder.
 - (3) Adjust interest rates, use fixed or variable rates, grant moratoriums on repayment of principal and interest, collect or compromise any obligations held by Rural Development and take such actions in respect to such loans as are necessary or appropriate, consistent with the purpose of the program and this Subpart. The Administrator will notify the Rural Development Finance Office of any change in payment terms, such as reamortizations or interest rate adjustments, and effective dates of any changes resulting from servicing actions.
- (b) Failure by an ultimate recipient to comply with the provisions of these regulations and/or loan agreement shall constitute grounds for a declaration of default and the demand for immediate and full repayment of its loan.
- (c) Failure by an intermediary to comply with the provisions of these regulations or to relend funds in accordance with an approved work plan or loan agreement shall constitute grounds for a declaration of default and the demand for immediate and full repayment of the loan.
- (d) In the event of default, the intermediary will promptly be informed in writing of the consequences of failing to comply with loan covenant(s).
- (e) Protective advances to the intermediary will not be made in lieu of additional loans, in particular working capital loans. Protective advances are advances made by Rural Development for the purpose of preserving and protecting the collateral where the intermediary has failed to and will not or cannot meet its obligations. The Administrator or designee must approve in writing all protective advances.
- (f) In the event of bankruptcy by the intermediary and/or ultimate recipient, Rural Development is responsible for protecting the interests of the Government. All bankruptcy cases should be reported immediately to the Regional Attorney. The Administrator must approve in advance and in

writing the estimated liquidation expenses on loans in liquidation bankruptcy. These expenses must be considered by Rural Development to be reasonable and customary.

(g) Liquidation, management, and disposal of inventory property will be handled in accordance with Subparts A, B, and C of Part 1955 of this Chapter.

§§1951.892 - 1951.893 [Reserved]

§1951.894 Debt settlement.

Debt settlement of all claims will be handled in accordance with the Federal Claims Collection Standards (4 CFR Parts 101-105).

§1951.895 [Reserved]

§1951.896 Appeals.

Any appealable adverse decision made by Rural Development which affects the borrower may be appealed upon written request of the aggrieved party in accordance with Subpart B of Part 1900 of this Chapter.

§1951.897 Exception authority.

The Administrator may, in individual cases, grant an exception to any requirement or provision of this subpart which is not inconsistent with an applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The basis for this exception will be fully documented. The documentation will: demonstrate the adverse impact; identify the particular requirement involved; and show how the adverse impact will be eliminated.

§§1951.898 - 1951.899 [Reserved]

§1951.900 OMB Control Number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB Control Number 0575-0131. In accordance with 5 CFR 1320, summarized below is the annualized public reporting burden for this regulation.

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